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PLR-135829-06

Date:

November 09, 2006

Legend

Old Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Sub 3 =

PLR-135829-06

2

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

F Sub 1 =

F Sub 2 =

Merger Sub =

Holdco =

Investor 1 =

Investor 2 =

A =

B =

C =

D =

E =

F =

Business A =

Business B =

Country X =

a =

b =

c =

d =

e =

f =

g =

h =

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i =

k =

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p =

q =

r =

s =

t =

Date 1 =

Date 2 =

Dear :

This letter responds to your July 25, 2006 request for rulings on certain federal income tax consequences of a series of proposed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in the support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Share Distribution (defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of earnings and

profits of Distributing or Controlled or both (see § 355(a)(1)(B) of the Internal Revenue Code of 1986, as amended (the “Code”) and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7).

Summary of Facts

Old Parent is the publicly-traded common parent of an affiliated group of corporations whose domestic corporations (excluding a § 936 company) file a consolidated federal income tax return. Old Parent has a single class of common stock outstanding, and management believes that A, B, C, D, E, and F are the only stockholders who own five percent or more of this stock.

Old Parent wholly owns Sub 1, Sub 2, Sub 3, and Sub 4. Old Parent also owns all of the common stock of Distributing, the only class of stock Distributing currently has outstanding. On Date 1, Sub 5 (then wholly owned by Old Parent) merged into Sub 1 in a transaction that the taxpayer claims qualified as a tax-free reorganization (the “Sub 5 Merger”). Sub 2 wholly owns F Sub 1, which wholly owns F Sub 2. Sub 4 wholly owns Sub 6, Sub 7, Sub 8, and Sub 9. Sub 8 wholly owns Sub 10, which in turn wholly owns Sub 11. Distributing wholly owns Merger Sub and Controlled. Controlled has outstanding a single class of common stock. Distributing, Merger Sub, and Controlled were each newly created in anticipation of the transaction described below. All of the above-described entities are domestic, except for F Sub 1 and F Sub 2 (both Country X entities).

Old Parent, through its affiliates, engages in Business A and Business B. The operations of Business A are primarily conducted through Sub 1, Sub 2, Sub 3, F Sub 2 and their wholly owned subsidiaries and limited liability companies. Business B is conducted indirectly by Sub 4 (through Sub 7), Sub 6, Sub 8, and Sub 9 and their subsidiaries, partnerships, and limited liability companies.

Financial information has been submitted which indicates that Business A (directly conducted by Sub 1) and Business B (directly conducted by Sub 7) each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Proposed Transaction

For what are represented to be valid business reasons, the following series of transactions have been proposed (collectively, the “transaction”):

(i) Merger Sub will merge into Old Parent (the “Old Parent Merger”). As a result of the Old Parent Merger, Old Parent will become a wholly-owned subsidiary of Distributing and Distributing will become the publicly-traded parent of the group.

(ii) Immediately following the Old Parent Merger, Old Parent will be converted into a limited liability company (“Old Parent LLC”) that will be wholly owned by Distributing (the “Old Parent Conversion”).

(iii) Certain intercompany receivables, payables, and loans between Distributing, Sub 4, or any of their subsidiaries on the one hand, and Controlled, Old Parent, or any of their subsidiaries (excluding Sub 4 and any of its subsidiaries) on the other hand, will be cancelled.

(iv) Sub 4, Sub 6, Sub 7, Sub 8, Sub 10, and Sub 11 will be converted into limited liability companies (Sub 4 will be referred to hereinafter as “Sub 4 LLC” following its conversion).

(v) Old Parent LLC will distribute all of its membership interests in Sub 4 LLC to Distributing.

(vi) Distributing will contribute all of its membership interests in Old Parent LLC to Controlled (the “Contribution”).

(vii) Pursuant to an Investment Agreement, Investor 1 and Investor 2 (together, “Investor”) will acquire (the “Share Issuance”) a number of newly issued shares of Class A common stock of Distributing (the “Distributing Class A Common Stock”). The Distributing Class A Common Stock will be automatically convertible into Distributing common stock that will represent approximately a% of the Distributing common stock upon the share conversion described in step (xii) below.

(viii) Sub 4 LLC and/or one or more of its subsidiaries will incur approximately \$b of indebtedness from third-party sources.

(ix) On the closing date, Distributing will make a cash distribution to a paying agent for the benefit of the holders of record of Distributing common stock (other than Investor) in the amount of \$c per share of Distributing common stock (the “Cash Distribution”).

(x) Immediately after the Cash Distribution, Distributing will distribute on a pro rata basis to holders of record of Distributing common stock (other than Investor), all of its Controlled common stock (the “Share Distribution”).

(xi) After the completion of steps (i) through (x), Distributing will contribute all of its membership interests in Sub 4 LLC to Holdco, a newly-formed domestic limited liability company wholly owned by Distributing.

(xii) The Distributing Class A Common Stock will automatically convert into Distributing common stock on a day subsequent to the Share Distribution.

(xiii) Subsequent to the Share Distribution, certain post-closing cash adjustments may be paid by Distributing to Controlled (or vice-versa) as follows: (a) Distributing or Controlled, as the case may be, may be required to pay to the other party cash equal to the difference between the actual amount of cash held in bank and other accounts of Distributing and its subsidiaries immediately following the Share Distribution (the "Distributing Group") over the estimated amount in such accounts that was to be retained by Distributing Group members under the terms of the Separation Agreement; (b) Distributing will pay to Controlled d% of any interest it receives from the paying agent of the Cash Distribution with respect to interest earned on amounts held in escrow pending distribution; (c) Distributing or Controlled, as the case may be, may be required to pay to the other a cash adjustment related to the allocation of tax liabilities between Distributing and Controlled as set forth in a Tax Allocation Agreement; (d) Controlled will pay to Distributing certain payments relating to employees and may make severance payments or terminating payments to certain former officers and employees of Sub 4 and Old Parent; and (e) Distributing will pay certain expenses up to a specified cap incurred by Old Parent in connection with the transaction ((a) through (e) will be referred to collectively as the "Post-Closing Cash Adjustments"). In addition, prior to or at the time of the Cash Distribution, a cash adjustment (the "Cash Distribution Adjustment") will be paid in connection with the payment of the Cash Distribution. If the amount required to make the Cash Distribution exceeds \$e, Controlled will pay (or will be treated as paying) Distributing an amount equal to such excess; if the Cash Distribution is less than \$e, Distributing will pay (or will be treated as paying) to Controlled at the time of the Cash Distribution an amount equal to such shortfall. In addition, Distributing will bear all of Investor's expenses and pay a transaction fee to an affiliate of Investor.

(xiv) Old Parent currently maintains four non-qualified stock option plans pursuant to which Old Parent has granted to its employees and directors options to purchase shares of Old Parent common stock (the "Old Parent Options"). Old Parent also maintains three management incentive plans and one deferred compensation plan under which benefits can be paid or settled in shares of Old Parent common stock. Under the terms of the transaction agreements: (i) as a result of the Old Parent Merger, each Old Parent Option will be converted into an option to acquire Distributing common stock (each, a "Distributing Option"), (ii) in connection with the Share Distribution, each Distributing Option held by a current or former Old Parent employee (and one Sub 4 employee) or a non-employee director of Old Parent (other than a director who will become a director of Distributing), that is outstanding at the time of the Share Distribution, will become fully exercisable and will be converted into an option to acquire shares of Controlled common stock and will be adjusted to take into account the Cash Distribution and the Share Distribution (each, a "Controlled Option"), effective immediately after the close of business on the closing date; and (iii) in connection with

the Share Distribution, each Distributing Option held by a current or former Sub 4 employee (other than the Sub 4 employee noted above), or a non-employee director of Old Parent who will become a director of Distributing that is outstanding at the time of the Share Distribution will become fully exercisable and will be adjusted to take into account the Cash Distribution and the Share Distribution (each, an “Adjusted Distributing Option”), effective immediately after the close of business on the closing date. With regard to Old Parent’s restricted stock plans and management bonus plan, pursuant to which shares of Old Parent Common Stock held by employees and directors are subject to transfer restrictions and a substantial risk of forfeiture (the “Old Parent Restricted Stock”), the Old Parent Board will take all actions necessary to ensure that all outstanding shares of Old Parent Restricted Stock held by Old Parent employees and Sub 4 employees will be fully vested not later than the first business day after the closing date.

(xv) Following the Share Distribution, Distributing intends to offer equity-based incentive compensation plans (the “Distributing Post-Distribution Compensatory Plans”) to members of its senior and mid-level management and possibly directors (collectively, the “Employees”). These plans are expected to include stock option grants and grants of restricted stock.

The Distributing By-Laws provide that the initial Distributing Board will consist of f directors, g of whom will be designated by Investor and h of whom will be designated by Old Parent. The Distributing Board will be divided into three classes, with i Investor designees in the first two classes and j Investor designees in the third class, and with each class to hold office until its successors are elected and qualified. Pursuant to a Stockholder’s Agreement with Investor, until the earlier of the k year anniversary of the closing date and the termination of the Stockholder’s Agreement, if Investor owns at least l% of the outstanding common stock of Distributing, it will have the right to nominate g directors to stand for election; if Investor’s ownership percentage is between m% and l%, n directors; if between o% and m%, p directors; if between q% and o%, r directors; and if between s% and q%, t directors. Any directors so nominated by Investor must still stand for election and be voted upon by all of the Distributing stockholders. Each share of Distributing common stock, whether owned by Investor or by the public, has identical rights with respect to voting for directors.

Representations

The following representations have been made regarding the Old Parent Merger and the Old Parent Conversion:

(a) The fair market value of the shares of Distributing common stock and other consideration (if any) received by each Old Parent stockholder will be approximately equal to the fair market value of the Old Parent stock surrendered in the exchange.

(b) Immediately following consummation of the Old Parent Merger and the Old Parent Conversion, and prior to the Share Issuance, the stockholders of Old Parent will own all of the outstanding Distributing stock and will own such stock solely by reason of their ownership of Old Parent stock immediately prior to the transaction.

(c) Other than pursuant to the Share Issuance or the Distributing Post-Distribution Compensatory Plans, Distributing has no plan or intention to issue additional shares of its stock following the Old Parent Merger and the Old Parent Conversion.

(d) Immediately following consummation of the Old Parent Merger and the Old Parent Conversion, and prior to the Contribution, Distributing (through Old Parent/Old Parent LLC) will possess the same assets and liabilities as those possessed by Old Parent immediately prior to the transaction. Assets used to pay expenses incurred in connection with the Old Parent Merger and the Old Parent Conversion, and all redemptions and distributions (except for regular, normal dividends) made by Old Parent immediately preceding the transaction will, in the aggregate, constitute less than one percent of the net assets of Old Parent.

(e) Other than Old Parent Options and benefit plans for employees and directors, and other than in connection with an outstanding indemnity arrangement, at the time of the Old Parent Merger and the Old Parent Conversion, Old Parent will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Old Parent.

(f) The liabilities of Old Parent assumed by Distributing plus the liabilities (if any) to which the transferred assets are subject were incurred by Old Parent in the ordinary course of its business and are associated with the assets being transferred.

(g) Except as provided in the Investment Agreement, and except with respect to certain expenses of certain stockholders Old Parent has agreed to reimburse, the Old Parent stockholders will pay their respective expenses, if any, incurred in connection with the Old Parent Merger and the Old Parent Conversion.

(h) Old Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(i) Distributing has no plan or intention to reacquire any of its stock issued in the Old Parent Merger.

The following representations have been submitted regarding the Contribution and Share Distribution:

(j) Any debt owed by Controlled to Distributing after the Share Distribution will not constitute stock or securities.

(k) No part of the Controlled common stock to be distributed by Distributing in the Share Distribution will be received by a stockholder as a creditor, employee, or in any capacity other than that of a stockholder (or restricted stockholder) of Distributing.

(l) Distributing and Controlled will not be eligible to elect to apply the transitional rule of § 355(b)(3)(C). Therefore, Distributing and Controlled will treat all members of their respective separate affiliated group as defined in § 355(b)(3)(B) (hereinafter, “SAG”) as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.

(m) The five years of financial information submitted on behalf of the business conducted by Sub 7 (a member of Distributing’s SAG) is representative of the present business operations of Sub 7, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(n) The five years of financial information submitted on behalf of the business conducted by Sub 1 (a member of Controlled’s SAG immediately before and immediately after the Share Distribution) is representative of the present business operations of Sub 1, and with regard to such business, except in connection with the Sub 5 Merger, there have been no substantial operational changes since the date of the last financial statements submitted.

(o) The Share Distribution will be carried out for the following business purposes: (i) to eliminate the business conflicts that have arisen between Business A and Business B in order to maximize the growth potential of both businesses; (ii) to allow the directors and senior management of each business to focus solely on the needs and opportunities of the respective businesses; and (iii) to facilitate the investment by Investor in Business B. The Share Distribution is motivated, in whole or substantial part, by one or more of the aforementioned corporate business purposes.

(p) The Share Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(q) The total fair market value of the assets that Distributing will transfer to Controlled in the Contribution will exceed the sum of: (a) the amount of liabilities (if any) assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (b) the amount of liabilities (if any) owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of cash (if any) and the fair market value of other property (if any) (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(r) The total fair market value of the assets transferred to Controlled by Distributing in the Contribution will equal or exceed the aggregate adjusted basis of the transferred assets.

(s) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing each equals or exceeds the sum of the liabilities assumed (within the meaning of § 357(d)) by Controlled plus any liabilities to which the transferred assets are subject.

(t) The liabilities assumed (within the meaning of § 357(d)) by Controlled in the Contribution and the liabilities to which the transferred assets are subject were incurred in the ordinary course of businesses and are associated with the assets being transferred.

(u) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing or Controlled, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) Distributing and Controlled will not be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(v) For purposes of § 355(d), immediately after the Share Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Share Distribution.

(w) For purposes of § 355(d), immediately after the Share Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Share Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Share Distribution.

(x) Payments made in connection with all continuing transactions between Distributing (and its affiliates) and Controlled (and its affiliates) after the Share Distribution will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(y) Following the Share Distribution, Distributing (through Sub 7) and Controlled (through Sub 1) each will continue the active conduct of its respective business, independently and with its separate employees. Certain members of Controlled's group may provide services to certain members of Distributing's group after the Share Distribution for a brief transition period on an arm's length basis.

(z) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of the property.

(aa) Immediately before the Share Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6, and as currently in effect; § 1.1502-13 and published by T.D. 8597). Further, any excess loss account Distributing may have with respect to its Controlled stock will be included in income immediately before the Share Distribution (see § 1.1502-19).

(bb) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(cc) The Share Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(dd) Neither Controlled nor Distributing nor any of their respective affiliates has entered (or will enter prior to the Share Distribution) into any agreement, understanding, arrangement or substantial negotiations, within the meaning of § 1.355-7(h)(1), with Employees or with Investor regarding the Distributing Post-Distribution Compensatory Plans.

(ee) Any acquisition of stock of Distributing or Controlled by an Employee as a result of the exercise of Controlled Options or Adjusted Distributing Options or the vesting of Old Parent Restricted Stock, or pursuant to Distributing Post-Distribution Compensatory Plans, will be made in a transaction to which § 83 or § 421(a) or (b) applies in connection with the Employee's performance of services as an Employee, director or independent contractor of Distributing, Controlled, any of their respective Subsidiaries, or any other person that is related to Distributing or Controlled under § 355(d)(7)(A) or a corporation the assets of which Distributing or Controlled acquires in a reorganization under § 368 (including Old Parent or any of its Subsidiaries), and such stock will not be excessive by reference to the services performed by such Employee.

(ff) Distributing and Controlled will enter into a closing agreement with the Service pursuant to § 1.1503-2(g)(2)(iv)(B)(3) regarding the dual consolidated losses of any dual resident corporation or separate unit or hybrid entity separate unit directly or indirectly owned by Controlled for which elections under § 1.1503-2T(g)(2) (or its predecessor sections) have been made, or alternatively, Distributing will recapture and report as income the amount of said dual consolidated losses as required under § 1.1503-2(g)(2)(iii)(A).

Rulings

Based solely on the information submitted and representations made, we rule as follows regarding the Old Parent Merger and the Old Parent Conversion:

(1) The Old Parent Merger, together with the Old Parent Conversion, will qualify as a reorganization under § 368(a)(1)(F). Old Parent and Distributing will each be “a party to a reorganization” under § 368(b).

(2) No gain or loss will be recognized by the stockholders of Old Parent upon their exchange of Old Parent shares for shares of Distributing common stock (§ 354(a)).

(3) No gain or loss will be recognized by Old Parent in the Old Parent Merger and the Old Parent Conversion (§ 361(a) and § 357(a)).

(4) No gain or loss will be recognized by Distributing in the Old Parent Merger and the Old Parent Conversion (§ 1032(a)).

(5) The basis of each asset of Old Parent in the hands of Distributing will be the same as the basis of that asset in the hands of Old Parent immediately prior to its transfer (§ 362(b)).

(6) The holding period of each Old Parent asset held by Distributing will include the period during which the asset was held by Old Parent (§ 1223(2)).

(7) The basis of the Distributing common stock received by each Old Parent stockholder will be the same as the basis of the Old Parent stock surrendered by the stockholder in the exchange (§ 358(a)(1)).

(8) The holding period of the Distributing common stock received by each Old Parent stockholder will include the period during which the Old Parent shares were held by the stockholder, provided that the Old Parent shares were held as capital assets on the date of the exchange (§ 1223(1)).

(9) The tax year of the Old Parent affiliated group will not end on the date of the Old Parent Merger and such tax year will continue with Distributing as the successor to Old Parent in its capacity as the common parent of the affiliated group of corporations which Old Parent was the common parent (§ 1.381(b)-1(a)(2) and § 1.1502-75(d)(2)(i)).

Based solely on the information submitted and representations made, we rule as follows regarding the Contribution and Share Distribution:

(10) The Contribution, together with the Share Distribution, will be a reorganization under § 368(a)(1)(D). Distributing and Controlled will each be a “party to a reorganization” under § 368(b).

(11) No gain or loss will be recognized by Distributing in the Contribution (§ 361(a) and § 357(a)).

(12) No gain or loss will be recognized by Controlled in the Contribution (§ 1032(a)).

(13) Controlled’s basis in each asset received from Distributing will equal the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).

(14) The holding period of each asset received by Controlled will include the period during which such asset was held by Distributing (§ 1223(2)).

(15) The Cash Distribution will be treated as a distribution to its recipients to which § 301 applies by reason of § 356(b).

(16) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing stockholders on their receipt of the Controlled common stock in the Share Distribution (§ 355(a)).

(17) Earnings and profits of Distributing (if any) will be allocated between Distributing and Controlled in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3) after taking into account the decrease resulting from the Cash Distribution.

(18) No gain or loss will be recognized by Distributing in the Share Distribution (§ 361(c)).

(19) The aggregate basis of the Controlled common stock and Distributing common stock in the hands of each Distributing stockholder will be the same as the aggregate tax basis of the Distributing common stock held by such stockholder immediately before the Share Distribution (as adjusted under § 301(c)(2) in connection with the Cash Distribution) allocated in proportion to the fair market value of each (§ 358(a)(1) and (b) and § 1.358-2(a)). If a Distributing stockholder that purchased or acquired shares of Distributing common stock on different dates or at different prices is not able to identify which particular share of Controlled common stock is received with respect to a particular share of Distributing common stock, the stockholder may designate which share of Controlled common stock is received with respect to a particular share of Distributing common stock, provided the terms of the designation are consistent with the terms of the distribution.

(20) Assuming that the shares of Distributing common stock held by each Distributing stockholder are capital assets in the hands of such stockholder, the holding period of the Controlled common stock received by the Distributing stockholder in the Share Distribution will include the holding period of the Distributing common stock on which the distribution is made (*i.e.*, the stockholder's holding period for the Old Parent common stock from which his or her shares of Distributing common stock were converted in the Old Parent Merger) (§ 1223(1)).

(21) No gain or loss will be recognized by Distributing (except as described in ruling (22) below) or Controlled upon the receipt of the Cash Distribution Adjustment.

(22) No gain will be recognized by Distributing upon its receipt of cash from Controlled under the Post-Closing Cash Adjustments and the Cash Distribution Adjustment provided that the aggregate amount of cash received by Distributing under these adjustments does not exceed the amount of cash that Distributing will distribute to its stockholders in the Cash Distribution.

(23) Payments made between Distributing and Controlled under the Post-Closing Cash Adjustments that (i) have arisen or will arise for a taxable period ending on or before the Share Distribution or for a taxable period beginning before and ending after the Share Distribution and (ii) will not become fixed and ascertainable until after the Share Distribution, will be treated as occurring before the Share Distribution (cf. Arrowsmith v. Commissioner, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952)) (tax character of later transaction will derive from earlier, related transaction).

(24) Assuming that (i) the investment decision of Investor to enter into the Investment Agreement on Date 2 was not based on any investment decision of any Employee with respect to acquiring or retaining stock (or options to acquire stock) of Distributing and (ii) there was no formal or informal understanding between Investor and any Employee at the time Investor entered into the Investment Agreement regarding an acquisition or retention of stock of Distributing by any Employee, none of the Employees acquiring stock of Distributing as a result of the exercise of Old Parent Options or Adjusted Distributing Options or the vesting of Old Parent Restricted Stock or pursuant to the Distributing Post-Distribution Compensatory Plans will be treated as being members of a "coordinating group" of which Investor is a member within the meaning of § 1.355-7(h)(4), or as acting pursuant to the same plan or arrangement with Investor within the meaning of § 355(d)(7)(B).

(25) The initial designation of directors for the Distributing Board and the governing arrangements set forth in the Stockholder' Agreement and the Distributing By-Laws, as discussed herein, will not be taken into account for purposes of the § 355(d) and § 355(e) analyses.

(26) No gain or loss will be recognized by and no amount will be included in the income of Investor upon the conversion of their shares of Distributing Class A Common Stock into Distributing common stock (§ 1036(a)).

Caveats

We express no opinion about the tax treatment of the transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

(i) Whether the Share Distribution satisfies the business purpose requirement of § 1.355-2(b);

(ii) Whether the Share Distribution is being used principally as a device for the distribution of the earnings and profits of Distributing or Controlled (see § 355(a)(1)(B) and § 1.355-2(d));

(iii) Whether the Share Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing or Controlled (see § 355(e) and § 1.355-7);

(iv) The federal income tax consequences of the debt cancellations described in step (iii), the conversions described in step (iv), and the contribution described in step (xi);

(v) Whether the Sub 5 Merger qualified as a tax-free reorganization;

(vi) The federal income treatment of Old Parent's payment of any expense obligations of its stockholders in the Old Parent Merger;

(vii) The federal income tax consequences (if any) of the payment by Distributing of the Investor's expenses as well as the payment by Distributing of the transaction fee to the affiliate of Investor; and

(viii) The existence and/or the required recapture of dual consolidated losses pursuant to § 1.1503-2(g)(2)(iii)(A) of any dual resident corporation or separate unit or hybrid entity separate unit owned directly or indirectly by Distributing or Controlled.

Procedural Statements

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)